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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,974	11/03/2003	Ian Zetterstrom Smith	36246	5016

116 7590 10/26/2004

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EXAMINER

FLORES SANCHEZ, OMAR

ART UNIT PAPER NUMBER

3724

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,974

Applicant(s)

SMITH, IAN ZETTERSTROM

Examiner

Omar Flores-Sánchez

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 19-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-3, 19-25 and 28-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to applicant's amendment received on 07/21/04.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3, 19-25 and 28-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not clear what "the elongate shaft is generally aligned along an edge of an area to be cut" encompasses. Figure 3 clearly illustrates the elongate shaft far from the cutting area and an edge of an area to be cut.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 19-21, 28, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Faher (6,260,278).

Fasher discloses the invention including a cutting head housing 100, a cutter means/rotatable cutter line 34, an elongate shaft 22, connection means 50, a hand-grippable portion 16, an effective rotation (see col. 6, line 63-64) and an axis of rotation (see Fig. 5).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faher (6,260,278).

Faher discloses the invention substantially as claimed including a motor 20. Faher does not show a ball-and-socket joint. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Faher's joint, since the examiner takes

Art Unit: 3724

Official Notice of the equivalence of upper and lower housings (52 and 60) and a ball-and-socket joint for their use in the joint connection art and the selection of any of these known equivalents to provide adjustment mechanisms to change the orientation of the cutting head would be within the level of ordinary skill in the art.

5. Claims 29- 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faher (6,260,278) in view of Wagster et al. (5,325,928).

Faher discloses the invention substantially as claimed except for a wheel. However, Wagster teaches the use of a wheel 30 for the purpose of improving the stability of the trimmer device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Faher's device by providing the wheel as though by Wagster in order to improve the stability of the trimmer device.

Allowable Subject Matter

6. Claims 26-27 are allowed.

Response to Arguments

7. Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that Faher does not show "a line joining a point within the hand-grippable portion and the connection means is substantially parallel to the plane of rotation of the cutter means when the cutter means is substantially vertical". However, Faher teaches the line joining a point (see Fig. 3, where a line collinear with the shaft axis joining the portion of the handle 16 that is connected

Art Unit: 3724

to the shaft with the connection means 50) within the hand-grippable portion and the connection means is substantially parallel (see Fig. 3) to the plane of rotation of the cutter means when the cutter means is substantially vertical (see Fig. 3 and Fig. 4 where Faher's invention is capable of set the cutter means more close to the vertical orientation, when the operator is situated in the upper hill using the same cutting setting in Fig. 3). In response to applicant's argument that Faher's members (50 and 60) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the ball and socket joint is capable of rotation in the same single plane of Faher's invention. If the ball and socket joint is capable of rotation in more than one plane is irrelevant because it perform the function and members (50 and 60) and the ball and socket joint are in the same field.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3724


CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar Flores-Sánchez whose telephone number is 703-308-0167. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ofs
October 21, 2004



KENNETH E. PETERSON
PRIMARY EXAMINER